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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
ELIZABETH HOLMES and
RAMESH "SUNNY" BALWANI,
Defendants.

Case No. 18-CR-00258-EJD

**DEFENDANT ELIZABETH HOLMES'
JOINDER IN OPPOSITION TO UNITED
STATES' MOTION TO EXTEND
DEADLINE BY WHICH TO COMPLY
WITH COURT'S NOVEMBER 5, 2019,
ORDER**

Date: January 13, 2020
Time: 10:00 a.m.
Courtroom: 4, 5th Floor

Hon. Edward J. Davila

Ms. Holmes joins Defendant Balwani's Opposition to the United States' Motion To Extend Deadline by Which To Comply with Court's November 5, 2019, Order (Dkt. No. 215). In further support of the opposition, Ms. Holmes states the following:

1. The FDA documents at issue here are critical to the defense. *See* Dkt. No. 67 at 3-4, 14-16, 18-20 (Mot. To Compel). It was apparent after review of the government's initial Rule 16 production (in late 2018) that substantial FDA materials had not been collected by the DOJ (or its FDA

1 case agent) and produced to the defense. Ms. Holmes believed there was substantial additional evidence
2 in the FDA files that were critical to her defense. Ms. Holmes promptly demanded those materials from
3 the government, and when it refused to comply, she filed a motion to compel on April 15, 2019.
4 Subsequent events have proven Ms. Holmes correct that FDA documents essential to her defense were
5 missing. The number of FDA documents responsive to the six specified categories set forth in Ms.
6 Holmes' motion to compel exceeds the government's initial production of just 5,492 FDA documents by
7 many orders of magnitude. These productions have included significant documents from custodians
8 who the government interviewed and who they apparently intend to call as witness at trial—and many
9 directly contradict the FDA-related allegations in the indictment. *See* Dkt. No. 121 at 7 (September 30,
10 2019 Joint Status Memo); *see also* Transcript of Proceedings Before the Honorable Edward J. Davila at
11 13-15 (10/2/2019). Unfortunately, based on the information provided in the government's motion, it
12 appears that the production of these important materials is only about one-third complete.

13 2. This case is set for trial eight months from the date of this filing. The governing
14 scheduling order set a September 16, 2019 deadline for the completion of the government's Rule 16
15 productions—a date that passed three and a half months ago. The government's current motion
16 effectively seeks to extend that deadline to sometime in late May 2020—at which time it will complete
17 its production of these FDA documents. On that schedule the defense will receive these documents
18 eight months after the initial Rule 16 deadline; five months after the Rule 12 motions deadline; one
19 month after Defendants' expert disclosures are due; one month after Defendants' Rule 16 disclosures are
20 due; fifteen days after Defendants' witness and exhibits lists are due; and at or around the same time that
21 Defendants' motions in limine and expert motions are due. A review of these dates makes plain that the
22 government's proposed extension is completely unworkable, and would significantly interfere with the
23 defense's ability to prepare for trial. The government's motion should be denied, and it should be
24 ordered to take all necessary steps to comply with Court's November 5, 2019 Order forthwith.

1 DATED: January 6, 2020

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3 /s/ Lance Wade
4 KEVIN DOWNEY
5 LANCE WADE
6 AMY MASON SAHARIA
7 KATHERINE TREFZ
8 Attorneys for Elizabeth Holmes
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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2020, a copy of this filing was delivered via ECF on all
counsel of record.

/s/ Lance Wade
LANCE WADE
Attorney for Elizabeth Holmes